



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 48 CFR Parts 812, 813, and 852

#### RIN 2900-AP58

### Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V005—parts 812, 813)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VAAM, and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the Federal Register. To minimize the number of rules published, VA will combine related topics.

**DATES:** Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER] to be considered in the formulation of the final rule.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (00REG),

Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AP58 – Revise and Streamline VA Acquisition Regulation to Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V005 – parts 812, 813).” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ricky Clark, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington DC 20001, (202) 632-5276. This is not a toll-free telephone number.

**SUPPLEMENTARY INFORMATION:**

Background

This action is being taken under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR. This authority ensures that Government procurements are handled fairly and consistently, that the Government receives overall best value, and that the Government and contractors both operate under a known set of rules.

The proposed rule would update the VAAR to current FAR titles, requirements, and definitions; it would correct inconsistencies and removes redundancies and duplicate material already covered by the FAR; it would also delete outdated material or information and appropriately renumber VAAR text, clauses, and provisions where required to comport with FAR format, numbering and arrangement. All amendments, revisions, and removals have been reviewed and concurred with by an Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are broken up consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking.

## Discussion and Analysis

The VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance.

### VAAR Part 812—Acquisition of Commercial Items

In VAAR part 812, we propose to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of VA's Chief Acquisition Officer, and add the citation for 38 U.S.C. 8127-8128 which addresses small business concerns owned and controlled by Veterans.

In subpart 812.1, Acquisition of Commercial Items—General, we propose to delete 812.102, Applicability, as unnecessary duplication of language in the FAR.

We propose to add 812.102-70, Applicability of Veterans preferences, to state that the preferences in subpart 819.70 apply to part 812.

We propose to revise 812.301, Solicitation provisions and contract clauses for the acquisition of commercial items, to delete the existing text and replace paragraph (f) with new text prescribing insertion into solicitations and contracts for commercial

acquisitions the provision 852.212-70, Provisions Applicable to VA Acquisition of Commercial Items, and the clause 852.212-71, Contract Terms and Conditions Applicable to VA Acquisition of Commercial Items, which will list all VAAR provisions and clauses from other parts that are available for use in commercial acquisitions. We propose to allow a contracting officer to indicate with a checkmark the specific provisions and clauses that apply to the acquisition. We propose to add a new provision 852.212-72, Gray Market Items, to require vendors of medical equipment to be an Original Equipment Manufacturer (OEM), authorized dealer, authorized distributor or authorized reseller of such equipment.

We propose to revise the list of provisions and clauses and to incorporate them into the new provision and clause being prescribed. The following provisions and clauses are not included in revised section 812.301(f) and further action on them will be addressed in future proposed rules—

852.203-71, Display of Department of Veterans Affairs Hotline Poster.

852.207-70, Report of Employment Under Commercial Activities.

852.211-71, Special Notice.

852.211-72, Technical Industry Standards.

852.211-73, Brand Name or Equal.

852.211-74, Liquidated Damages.

852.211-75, Product Specifications.

852.214-70, Caution to Bidders—Bid Envelopes.

852.216-70, Estimated Quantities.

We propose to add the following provisions and clauses to those available for use in commercial acquisitions based on their potential applicability for commercial item purchases—

852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

852.215-71, Evaluation Factor Commitments.

852.219-9, VA Small Business Subcontracting Plan Minimum Requirements.

852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside.

852.222-70, Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement.

852.232-72, Electronic Submission of Payment Requests.

852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements.

852.247-70, Determining Transportation Costs for Bid Evaluation.

We propose to remove 812.302, Tailoring of provisions and clauses for the acquisition of commercial items, in its entirety since it deals with internal procedures for obtaining a waiver to allow tailoring of provisions and clauses to be inconsistent with customary commercial practice.

## VAAR Part 813—Simplified Acquisition Procedures

In VAAR part 813, we propose to add the citation for 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of VA's Chief Acquisition Officer.

We propose to add 813.003-70, Policy, which would explain that the Veterans First Contracting Program has broad applicability in contracts using Simplified Acquisition Procedures, and 813.102, Source list, to require that contracting officers use the Vendor Information Pages (VIP) database to verify Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business status.

We propose to remove 813.106, Soliciting competition, evaluation of quotations or offers, award and documentation, since paragraph (a) addresses internal procedures and paragraph (b) contains material that is adequately addressed in FAR. We will retain the title since 813.106-70 is being added.

We propose to remove 813.106-3, Award and documentation, since it is material adequately addressed in FAR.

We propose to remove 813.106-70, Oral purchase orders, because the FAR contains no authority to issue oral purchase orders.

We propose to add 813.106-70, Soliciting competition, evaluation of quotations or offers, award and documentation – the Veterans First Contracting Program, which emphasizes that contracting officers can use other than competitive procedures under specified circumstances when awarding to Service-Disabled Veteran-Owned Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs).

We propose to revise 813.202, Purchase guidelines, to renumber it as 813.203 to correspond to the FAR coverage; to delete the words “open market” as unnecessary; and to spell out Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses the first times the acronyms are used.

We propose to remove 813.302, Purchase orders and 813.302-5, Clauses, because they incorrectly prescribe a clause in part 837.

We propose to add 813.305-70, VA’s imprest funds and third party drafts policy, to state that the Government-wide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts.

We propose to remove 813.307, Forms, and include it in VA’s internal procedural guidance.

#### VAAR Part 852—Solicitation Provisions and Contract Clauses

In VAAR part 852, we propose to replace the 38 U.S.C. 501 citation with 41 U.S.C. 1702 which addresses the acquisition planning and management responsibilities of VA’s Chief Acquisition Officer.

In subpart 852.2, we propose to add the provision 852.212-70, Provisions Applicable to VA Acquisition of Commercial Items, to permit the contracting officer to check those that will be applicable to the individual commercial buy.

In subpart 852.2, we propose to add the provision 852.212-71, Contract Terms and Conditions Applicable to VA Acquisition of Commercial Items, to permit the



contracting officer to check those that will be applicable to the individual commercial buy.

In subpart 852.2, we propose to add the provision 852.212-72, Gray Market Items, to ensure that new medical equipment for VA Medical Centers is purchased from authorized distributors and that all software licensing, warranty and service associated with the equipment/system shall be in accordance with the Original Equipment Manufacturer's terms and conditions.

#### Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the Department of Veterans Affairs Acquisition Regulation (VAAR) for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with Federal Acquisition Regulation (FAR) subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

#### Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined to be a significant regulatory action under E.O. 12866, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available

on VA's Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

#### Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 48 CFR 813, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for 48 CFR 813 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0393.

#### Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would generally be small business neutral. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA estimates no cost impact to individual business would result from these rule updates. On this basis, the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory

Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal Governments or on the private sector.

### **List of Subjects**

#### **48 CFR Part 812 and 813**

Government procurement.

#### **48 CFR Part 852**

Government procurement, Reporting and recordkeeping requirements.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs approved this document on April 21, 2017, for publication.

Dated: January 3, 2018.

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Michael Shores  
Director,  
Regulation Policy & Management  
Office of the Secretary  
Department of Veterans Affairs

For the reasons set out in the preamble, VA proposes to amend 48 CFR parts 812, 813, and 852 as follows:

## **PART 812—ACQUISITION OF COMMERCIAL ITEMS**

1. The authority citation for part 812 is revised to read as follows:

Authority: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301-1.304.

### **Subpart 812.1—Acquisition of Commercial Items—General**

2. Section 812.102 is removed.
3. Section 812.102-70 is added to subpart 812.1 to read as follows:

#### **812.102-70 Applicability of veterans preferences.**

Based on the authority under 38 U.S.C. 8127 and 8128, the Veterans First Contracting Program in subpart 819.70 applies to VA contracts under this part, and the provisions and clauses prescribed reflect agency unique statutes applicable to the acquisition of commercial items.

### **Subpart 812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

4. In § 812.301:
  - a. Remove paragraphs (a)—(e).
  - b. Revise paragraph (f) to read as follows:

**812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f)(1) Contracting officers shall insert the provision 852.212-70, Provisions Applicable to VA Acquisition of Commercial Items, in all solicitations for commercial acquisitions and check only those provisions that apply to the individual solicitation.

(2) Contracting officers shall insert the clause 852.212-71, Contract Terms and Conditions Applicable to VA Acquisition of Commercial Items, in all solicitations and contracts for commercial acquisitions and check only those clauses that apply to the individual contract.

(3) Contracting officers shall insert the clause 852.212-72, Gray Market Items, in all solicitations and contracts for commercial acquisitions of new medical equipment for VA Medical Centers and that include FAR provisions 52.212-1, Instruction to Offerors—Commercial Items, and 52.212-2, Evaluation—Commercial Items.

**812.302 [Removed]**

5. Section 812.302 is removed.

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**PART 813—SIMPLIFIED ACQUISITION PROCEDURES**

6. The authority citation for part 813 is revised to read as follows:

Authority: 38 U.S.C. 8127-8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301-1.304.

### **813.003-70 [Added]**

7. Section 813.003-70 is added to read as follows:

#### **813.003-70 Policy.**

(a) The Veterans First Contracting Program in subpart 819.70 applies to VA contracts (see FAR 2.101, Definitions) under this part and has precedence over other small business programs referenced in FAR part 19.

(b) Notwithstanding FAR 13.003(b)(2), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with FAR 19.203, and 819.7004.

(c) When using competitive procedures, the preference for restricting competition to verified SDVOSBs or VOSBs is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified SDVOSBs or VOSBs at fair and reasonable prices that offer best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs or VOSBs, when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at 819.7009.



(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at 815.304 and the evaluation criteria clause prescribed at 815.304-71(a).

(d) The SDVOSB and VOSB eligibility requirements in part 819.7003 apply, including verification of the SDVOSB and VOSB status of an offeror or awardee at the time of submission of offer/quote and prior to award. The offeror must also represent that it meets the small business size standard for the assigned North American Industry Classification Code System (NAICS) code and other small business requirements in FAR part 19 (e.g. subcontracting limitations and non-manufacturer rule).

#### **Subpart 813.1—Procedures**

##### **813.102 [Added]**

8. Section 813.102 is added to subpart 813.1 to read as follows:

##### **813.102 Source list.**

Pursuant to 819.7003, contracting officers shall use the Vendor Information Pages (VIP) database to verify SDVOSB/VOSB status.

##### **813.106 [Amended]**

9. In § 813.106 remove paragraphs (a) and (b) and to retain the section heading.

10. Section 813.106-3 is removed.

11. Section 813.106-70 is revised to read as follows:

**813.106-70 Soliciting competition, evaluation of quotations or offers, award and documentation – the Veterans First Contracting Program.**

(a) *General.* When using competitive procedures under this part, the contracting officer shall use the Veterans First Contracting Program in subpart 819.70 and the guidance set forth in 813.003-70.

(b) Pursuant to 38 U.S.C 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a verified SDVOSB or VOSB for procurements under the simplified acquisition threshold.

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a firm verified under the Veterans First Contracting Program at subpart 819.70, using procedures other than competitive procedures if—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed \$5,000,000; and

(3) In the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers overall best value to the government.

#### **Subpart 813.2—Actions at or Below the Micro-Purchase Threshold**

##### **813.202 [Removed]**

12. Section 813.202 is removed.

13. Section 813.203 is added to subpart 813.2 to read as follows:

##### **813.203 Purchase guidelines.**

Micro-purchases shall be equitably distributed among all qualified Service-

Disabled Veteran-Owned Small Businesses (SDVOSBs) or Veteran-Owned Small Businesses (VOSBs), respectively, to the maximum extent practicable.

### **Subpart 813.3—Simplified Acquisition Methods**

#### **813.302 [Removed]**

14. Section 813.302 is removed.

#### **813.302-5 [Removed]**

15. Section 813.302-5 is removed.

16. Section 813.305-70 is added to subpart 813.3 to read as follows:

#### **813.305-70 VA's imprest funds and third party drafts policy.**

VA's Government-wide commercial purchase card and/or convenience checks shall be used in lieu of imprest funds and third party drafts.

#### **813.307 [Removed]**

17. Section 813.307 is removed.

### **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

18. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), and 1702; and 48 CFR 1.301-1.304.

### **Subpart 852.2—Texts of Provisions and Clauses**

19. Section 852.212-70 is added to subpart 852.2 to read as follows:

#### **852.212-70 Provisions applicable to VA acquisition of commercial items.**

As prescribed in 812.301(f)(1), insert the following provision:

PROVISIONS APPLICABLE TO VA ACQUISITION OF COMMERCIAL ITEMS (DATE)

The Contractor agrees to comply with any provision that is incorporated herein by reference or full text to implement agency policy applicable to acquisition of commercial items or components. The following provisions that have been checked by the contracting officer are incorporated by reference or in full text; text requiring fill-ins is shown under the provision's title:

\_\_\_ 852.209-70, Organizational Conflicts of Interest.

\_\_\_ 852.214-71, Restrictions on Alternate Item(s).

\_\_\_ 852.214-72, Alternate Item(s).

Bids on \_\_\_\_\_ [Contracting officer will insert an alternate item that is considered acceptable.] will be given equal consideration along with bids on \_\_\_\_\_ [Contracting officer will insert the required item and item number.] and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of \_\_\_\_\_. [Contracting officer will insert the required item and item number.]

(End of provision)

\_\_\_ 852.214-73, Alternate Packaging and Packing.

\_\_\_ 852.214-74, Bid Samples.

\_\_\_ 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

\_\_\_ 852.233-70, Protest Content/Alternative Dispute Resolution.

\_\_\_ 852.233-71, Alternate Protest Procedure.

\_\_\_ 852.247-70, Determining Transportation Costs for Bid Evaluation.

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

Anticipated Demand

Area destination	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	5
Total of Factors	20

(End of provision)

\_\_\_ 852.270-1, Representatives of Contracting Officers.

\_\_\_ 852.273-70, Late Offers.

\_\_\_ 852.273-71, Alternative Negotiation Techniques.

\_\_\_ 852.273-72, Alternative Evaluation.

\_\_\_ 852.273-73, Evaluation—Health-Care Resources.

\_\_\_ 852.273-74, Award Without Exchanges.

20. Section 852.212-71 is added to read as follows:

**852.212-71 Contract terms and conditions applicable to VA acquisition of commercial items.**

As prescribed in 812.301(f)(2), insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO VA ACQUISITION OF  
COMMERCIAL ITEMS (DATE)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The following clauses that have been checked by the contracting officer are incorporated by reference; text requiring fill-ins is shown under the clause's title:

\_\_\_ 852.203-70, Commercial Advertising.

\_\_\_ 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

\_\_\_ 852.215-71, Evaluation Factor Commitments.

\_\_\_ 852.219-9, VA Small Business Subcontracting Plan Minimum Requirements.

\_\_\_ 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

\_\_\_ 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside.

\_\_\_ 852.222-70, Contract Work Hours and Safety Standards Act—Nursing Home Care Contract Supplement.

\_\_\_ 852.229-70, Sales and Use Taxes.

\_\_\_ 852.232-72, Electronic Submission of Payment Requests.

\_\_\_ 852.237-7, Indemnification and Medical Liability Insurance.

\_\_\_ 852.237-70, Contractor Responsibilities.

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required

by the laws of the State of \_\_\_\_ [Insert name of State]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

(End of clause)

\_\_\_\_ 852.246-70, Guarantee.

The contractor guarantees the equipment against defective material, workmanship and performance for a period of \_\_\_\_ [Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.], said guarantee to run from date of acceptance of the equipment by the Government. The contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the contracting officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor. [The above clause will be modified to conform to standards of the industry involved.]

(End of clause)

\_\_\_\_ 852.246-71, Inspection.

\_\_\_\_ 852.246-72, Frozen Processed Foods.



\_\_\_ 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements.

\_\_\_ 852.270-2, Bread and Bakery Products—Quantities.

\_\_\_ 852.270-3, Purchase of Shellfish.

\_\_\_ 852.271-72, Time Spent by Counselee in Counseling Process.

\_\_\_ 852.271-73, Use and Publication of Counseling Results.

\_\_\_ 852.271-74, Inspection.

\_\_\_ 852.271-75, Extension of Contract Period.

(b) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the following clause at

\_\_\_ 852.271-70, Nondiscrimination in Services Provided to Beneficiaries.

(End of clause)

21. Section 852.212-72 is added to subpart 852.2 to read as follows:

**852.212-72 Gray Market Items.**

As prescribed in 812.301(f)(3), insert the following provision in solicitations and contracts for new medical equipment for VA Medical Centers and that include FAR provisions 52.212-1, Instruction to Offerors—Commercial Items, and 52.212-2, Evaluation—Commercial Items:

GRAY MARKET ITEMS (DATE)

(a) Gray market items are Original Equipment Manufacturers' (OEM) goods sold through unauthorized channels in direct competition with authorized distributors. This procurement is for new OEM medical equipment only for VA Medical Centers. No remanufactures or gray market items will be acceptable.

(b) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM, such that the OEM's warranty and service are provided and maintained by the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

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